

JOSEPH P. AMRO
Claimant

THE BOEING CO. - WICHITA
Respondent

AETNA CASUALTY & SURETY COMPANY
Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

The Administrative Law Judge awarded claimant permanent partial general disability benefits based upon a sixty-five percent (65%) whole body functional impairment rating. The respondent and its insurance carrier requested this review and ask the Appeals Board to review the issues of:

- (1) Nature and extent of disability; and
- (2) Whether the medical expense for treatment of claimant's sinuses is related to his accident.

Those are the two issues on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be modified.

On April 14, 1993, claimant sustained serious injuries when he fell approximately twenty (20) feet down the stairs of a catwalk. The accident arose out of and in the course of claimant's employment with the respondent. Claimant alleges he has sustained injury to his neck, back, hands, legs and sinuses in addition to suffering hearing and vision loss. Also, claimant contends that he has psychological impairment that is the result of his April 1993 accident.

The Appeals Board finds claimant has a fifteen percent (15%) whole body functional impairment as a result of the musculoskeletal injuries claimant sustained as a result of his fall. This finding is based upon the testimony of Lawrence R. Blaty, M.D., a board-certified physiatrist, who began treating claimant in June 1993. Dr. Blaty did not attempt to evaluate the extent of impairment claimant sustained as a result of his other injuries because those areas were beyond his expertise.

The Appeals Board finds claimant has sustained a twenty-four percent (24%) whole body functional impairment for the double vision that he now experiences due to the deficient functioning of the left lateral rectus muscle, which is more probably than not the result of damage to the sixth cranial nerve that innervates the left eye. Although claimant has neither impairment to visual acuity nor to the visual field, tasks requiring visual scanning ability, such as driving and reading, will be more difficult. Reading will be quite difficult and certainly slower than if the lateral rectus palsy were not present. Claimant's double vision will interfere with his tasks as an engineer and will cause some difficulty keeping track where he is at on a computer screen and reading blueprints. In addition, his eyes will fatigue because of continuously adapting to his impairment. The headaches claimant now experiences are associated with his vision problems. As a result of his accident, claimant also has dry-eye syndrome which requires continual use of eye lubrication.

The twenty-four percent (24%) functional impairment rating for vision difficulties is based upon the testimony of Scott M. Carpenter, O.D., who examined claimant at respondent's request in July 1995. Although Dr. Carpenter admits he previously had not heard of the tests the workers compensation division provided him to assess functional impairment, claimant's situation is similar to the examples and guidelines provided that indicated the presence of a twenty-four to twenty-five percent (24-25%) impairment.

The Appeals Board notes that Joseph B. Sullivan, O.D., testified that claimant has a fifty percent (50%) functional impairment. However, the Appeals Board finds the opinions of Dr. Carpenter somewhat more persuasive regarding the percentage of functional impairment than those of Dr. Sullivan, O.D., because Dr. Carpenter's opinions were based on data from a more recent evaluation which appears to be more reliable than that used by Dr. Sullivan.

As a result of the closed-head injury claimant sustained in his April 1993 accident, claimant developed post-traumatic stress disorder and depression. According to the AMA Guides, claimant has sustained mild psychiatric impairment that impairs his ability to work. Based upon the testimony of George Dyck, M.D., the Appeals Board finds claimant has sustained a twenty-five percent (25%) whole body functional impairment due to his psychiatric condition. Dr. Dyck is the Director of Geriatric Psychiatry at the University of Kansas Medical Center and was selected by the respondent to evaluate claimant on two different occasions. The Appeals Board finds Dr. Dyck's opinion more persuasive than that of Mukhtar Shah, M.D., because Dr. Shah included in his impairment analysis the impairment stemming from claimant's vision difficulties. On the other hand, Dr. Dyck's opinion is based upon claimant's psychiatric impairment only and, therefore, does not include the impairment caused by his physical injuries.

Claimant contends he is entitled to workers compensation benefits and medical expense for treatment of his sinuses. Although x-rays taken shortly after the accident indicate claimant may have fractured his sinuses in the fall, one of claimant's treating physicians, Jerome E. French, M.D., testified he does not believe the fall caused claimant's sinus problem or the significant sinus disease that has since developed. Dr. French is the only physician to testify regarding this issue and, therefore, his opinion is uncontroverted. At oral argument, claimant's attorney admitted there is no evidence in the record other than some earlier reports from Dr. French that relate claimant's sinus condition to the fall.

Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy, and is ordinarily regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, Syl. ¶ 2, 558 P.2d 146 (1976).

Based upon the above, the Appeals Board finds that claimant has not sustained his burden of proof that his sinus problems are related to his accident and, therefore, all treatment and expenses related to that condition are not the responsibility of the respondent under the Workers Compensation Act. To the contrary, the Appeals Board finds that claimant has a long-standing history of allergies and it is more probably true than not true that claimant's present sinus problems relate to his allergies and the medical treatment he subsequently received for that condition.

The Appeals Board finds that claimant has sustained a hearing loss that constitutes a nine percent (9%) whole body functional impairment as a result of the fall and head trauma. This finding is also based upon the testimony of Dr. French who found that claimant had a nine to ten percent (9-10%) functional impairment for hearing loss according to the AMA Guides and who also testified claimant's hearing loss was probably the result of the accident. Dr. French's testimony and opinions regarding claimant's hearing loss are uncontroverted.

Because his injuries include an "unscheduled" injury, claimant's right to permanent partial disability benefits is governed by K.S.A. 1992 Supp. 44-510e. That statute provides:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment. . . . There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

Because he has returned to work for the respondent at a comparable wage, claimant is only seeking permanent partial disability benefits based upon his functional impairment rating. When combining the fifteen percent (15%) whole body functional impairment rating for the musculoskeletal injuries with the twenty-five percent (25%) whole body impairment rating for the psychiatric impairment with the twenty-four percent (24%) whole body impairment rating for the visual problems with the nine percent (9%) functional impairment rating for hearing loss, the Appeals Board finds claimant has sustained a fifty-six percent (56%) whole body functional impairment using the combined rating charts of the AMA Guides for which the claimant should receive permanent partial general disability benefits.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that both the Award and Award Nunc Pro Tunc entered by Administrative Law Judge John D. Clark on September 28, and September 29, 1995, respectively, should be modified to award claimant permanent partial general disability benefits based upon a 56% whole body functional impairment rating; that the medical treatment and expense related to treatment of claimant's sinus condition is not related to claimant's April 1993 accident and, therefore, are not the responsibility of the respondent and its insurance carrier under the Workers Compensation Act.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Joseph P. Amro, and against the respondent, The Boeing Company - Wichita, and its insurance carrier, Aetna Casualty & Surety Company, for an accidental injury which occurred April 14, 1993 and based upon an average weekly wage of \$914.10, for 47.73 weeks of temporary total disability compensation at the rate of \$299.00 per week or \$14,271.27, followed by 367.27 weeks at the rate of \$299.00 per week for a 56% permanent partial general disability, making a total award not to exceed \$100,000.00.

As of February 29, 1996, there is due and owing claimant 47.73 weeks of temporary total disability compensation at the rate of \$299.00 per week or \$ 14,271.27, followed by 102.56 weeks of permanent partial disability compensation at the rate of \$299.00 per week in the sum of \$30,665.44, for a total of \$44,936.71 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of the \$100,000.00 is to be paid at the rate of \$299.00 per week until fully paid or further order of the Director.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be directly paid as follows:

Barber & Associates	
Transcript of Preliminary Hearing	\$ 80.30
Transcript of Preliminary Hearing	\$ 96.50
Transcript of Regular Hearing	\$264.90
Barbara J. Terrell & Associates	
Deposition of Mukhtar Shah, M.D.	\$117.50
Deposition of Joseph Sullivan, O.D.	\$133.50
Deposition of Lawrence Blaty, M.D.	Unknown
Deposition of Jerome French, M.D.	\$137.50
Deposition Services	
Deposition of George Dyck, M.D.	\$357.90
Deposition of Scott Carpenter, O.D.	\$662.20

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Bill H. Raymond, Wichita, Kansas
Frederick L. Haag, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director